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Little Red Herrings--Copy That?

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Academic E-Books: Publishers ... from page 44

stead of buying these books now, librarians can wait for the future moment when a user actually demonstrates a need for a particular title. If the title is part of an eBook PDA plan, the need is fulfilled instantly and possibly only at a low rental fee (STL) if the title is only needed once or twice.” **Karen Fischer** notes in her article the “significant drop in purchases (and therefore in costs) in 2013 when Iowa implemented the one-day short-term loan option.” **Jim Dooley** from the **University of California at Merced**, discusses the **California Digital Library** consortial arrangement with **ebrary** for a university press DDA plan. Sixty-five presses participate in the program for the **University of California** system comprised of ten libraries. As of August 2014, 2,733 titles were available to the consortium. There were 843 STLs and just 65 titles purchased... Similar results have been reported by other consortia such as **NovaNET** (report posted on the **NovaNET** Website) and **VIVA** (article in *Against the Grain*, Spring 2014). **Kathleen Fountain** writes that as **Orbis Cascade** looked for ways to mitigate costs as publishers adjusted to the effects of DDA and STL, “publishers rejected the widespread adoption of the **NovaNET** model because it would have substantially reduced their revenue.”

Kathleen Fountain and **Karen Fischer** are among the most experienced users of DDA and STL in academic libraries. They have contributed insightful, nuanced and constructive perspectives, especially for their treatment of



emerging challenges. Both describe efforts to manage costs as participating publishers, who we should not forget are also the relative minority that have chosen to *experiment as partners*, respond to the effects of DDA and STL on their revenue. Both organizations have had to implement a process of weeding content from their DDA pools to manage the increasing list prices of eBooks after they have already entered the library DDA repositories, as well as the sharp increases in STL prices. Unfortunately, from the publisher perspective, this removes the promise of DDA for the *long-tail*, as well as the use of STL in place of ILL for libraries.

Given the struggle by both publishers and libraries to manage revenue, one of the surprising revelations regarding STL was that the “trigger events” for STL to convert into a purchase are not controlled by the publisher. **Fountain** writes that the trigger was “moved as necessitated by financial realities. At the close of FY 2013, for example, they moved the trigger from 10 to 15 [STLs] to further delay auto-purchases that would have put the program over budget. The trigger remained set at 15 STLs during the entirety of FY 2014 [...] It has been the only time that the trigger remained steady through an entire fiscal year. As a result, the **Alliance** reduced its rate of auto-purchase for the year and spent more money on STLs than in previous years.” **VIVA** reported the same adjustment to STL triggers. The STL trigger to purchase was originally set for 10 but it was raised to 25 [...] in order to maximize access [...] while keeping total costs within budget” (*Against the Grain*, Spring 2014).

Other topics are treated in the book including an interesting article (particularly in the context of articles already discussed) on

Occam’s Reader, an effort by **Texas Tech University**, the **University of Hawaii’ at Manoa** and the **Greater Western Library Alliance** to solve the problem of eBook ILL. A significant portion of the book discusses user behavior, which is an important and little understood area, as **Michael Levine-Clark** highlights in his epilogue to this collection:

Although the ability to measure use has not significantly changed librarians’ understanding of user behavior, it has fundamentally shifted how they build collections. Most significantly, it has allowed the development of DDA, which has benefited libraries by allowing them to present their users with a much larger pool of content from which to choose than was possible under traditional prospective purchasing models. But as the recent adjustments by publishers to STL pricing have shown, an unintended consequence of this new model is a decrease in predictable revenue for publishers...”

There is much more to be read between these covers. For its treatment of DDA alone, from various perspectives, this book is invaluable. It truly is more than a “snapshot”; the whole is greater than the sum of its parts. As **Fischer** writes, “In the relative dawn of eBook PDA, there are still many issues under development, such as available content, digital rights management, pricing, reports, and sustainable PDA models.”

Column Author’s Note: It will be ironic if this book is purchased by libraries rather than left in the hands of patrons to “trigger” (who might primarily in fact be librarians). We wish it well on its voyage.

Little Red Herrings — Copy That?

by **Mark Y. Herring** (Dean of Library Services, Dacus Library, Winthrop University) <herringm@winthrop.edu>

Google Books won another (and possibly the last?) round against the copyright drudges, or so we are to believe. Is anyone surprised? I know I’m not. In the latest chapter, the 2nd U.S. Court of Appeals ruled in early October that **Google’s** book-scanning project is a-ok, copacetic, fine with them, it doesn’t matter — you get the point. The “creators” in this case, authors under the auspices of the **Authors Guild** to those of us who work around books, will appeal again, but it appears at this point that they are spitting in the wind. Since 2005 the **Authors Guild** has tried to put the brakes on this runaway train to no avail. As an author, I appreciate their persistence, but I wonder now if this isn’t just throwing good

money after a bad idea. A federal appeals court ruled that **Google’s** “snippets” were “fair use” because what **Google** was doing was transformative. I suppose in the sense that **Google** distilled whole books into small, bite-sized tapas-tastings, that’s true.

In any event, it’s all fair use and so fair game. If you’re one of the authors, it doesn’t matter what you think, or, rather, if you disagree, it’s up to you to do something about it. **Google** is doing you a favor because, according to **Google** spokesperson **Aaron Stein**, **Google** has turned those snippets into a giant “card catalog” for the digital age. Hallelujah! Hallelujah! Besides, it exposes your materials to more eyes and that means more money, copy that?

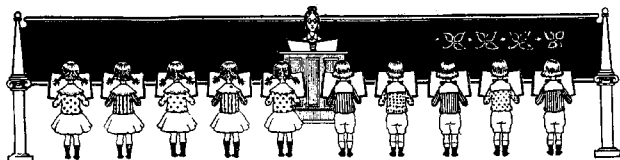
Had **Google** lost, some insiders say that this would have been the end of the service and possibly the beginning of the end of **Google**.

The company would have had to pay tens of millions in fines, perhaps even billions, and it’s clear that **Google** was tired of the legal proceedings. This now gives them carte blanche to continue on their merry way doing what the Internet is so good at: helping technicians make money off of others’ creations for free. Whew! Glad we dodged that bullet.

It appears that most are happy with this outcome, including many librarians. A random sample of headlines runs along the lines of “Researchers Rejoice!” to “Huge Win for Google” to “Copyright Go to Hell.” I’m just kidding about the last one. I made it up. But it may as well have been one.

Now, I’m not going to defend copyright. Everyone hates it in this country and I really don’t need another reason for people to send me hate tweets, even though they are so much better and easier to dismiss than the old hate snail mail I used to receive. But I would like to

continued on page 48



Between a Rock and a Hard Place: The Realities of Flat Discounts

by **Howard N. Lesser** (President, Midwest Library Service, 11443 St. Charles Rock Road, Bridgeton, MO 63044; Phone: 800-325-8833) <HLesser@midwestls.com>

It's often standard practice for library consortiums and many libraries to ask for simple flat discounts. Why shouldn't they? Flat discounts are easy to understand and, more importantly, are easy to compare.

As a book vendor, we are often asked about offering flat discounts, and bidding on a state contract often requires a form that only allows a single discount, regardless of the publisher. Although the single-discount world might appear to exist, the truth is that all flat discounts should require an asterisk.

We work with more than 20,000 publishers. Each has its own procedures, and discounts vary wildly between publishers. Some offer flat discounts; others offer multiple discounts based on a variety of factors; and many offer no discount at all.

Discounts vary because of the publishers' method of selling in different categories. For example, publishers supplying trade books to public libraries, major booksellers, and large-scale retailers (e.g., **Walmart**, **Amazon**) can afford to offer volume discounts. Discounts on educational and scholarly books for academic institutions, however, tend to be significantly smaller.

Due to changes in the industry, publishers' business plans have also transitioned. Print-on-demand, short runs, and eBooks seldom allow for a discount, and adding yet another layer to the issue are book distribution centers that represent multiple publishers.

It wouldn't be that difficult for a publisher to adjust list pricing so that a consistent discount could be offered. But the reality is that publishers have no real interest in changing. As a result, vendors trying to remain viable

are caught in the middle between customers desiring flat discounts and publishers offering discounts that are far from flat.

The question is, how do vendors bridge the gap? First, let's assume that no vendor will intentionally offer discounts at an unprofitable level. Presuming the publisher offers a discount, vendors will seek to offer a discount that will appeal to the customer and allow at least a minimal profit. To quote a flat discount, the vendor is required to make assumptions on the mix of discounts available from the publishers. If vendors are honest, they know this could better be described as merely an educated guess.

The publishing industry is clearly mature and well established. Its patterns and practices are set (mostly in stone). For the sake of comparison, however, let's consider vendors of other common products. Suppose there were a fixed price for a car, regardless of size, power, or features. Imagine a set price for lumber, regardless of wood type, grade, or tensile strength — or for carpeting, regardless of material, density, or durability.

How would car dealers, lumberyards, and carpet manufacturers respond? Two possibilities: They could price their products based on an anticipated mix, or they could devise a strategy that required no assumptions regarding the mix.

State contracts or agreements often set a firm discount, without exception, and every

state has its own contract requirements. When bidding, the book vendor is faced with trying to accommodate discounts that vary by state, university, and publisher — or to come up with an alternative. And here's the catch...

While the vendor is obligated to sell the books at the contractual discount, the vendor is not actually obligated to provide all of the books that have been ordered. Any books that can't be profitably supplied at the agreed upon discount can simply be cancelled as "not available."

Furthermore, vendors are not obligated to disclose why a book is unavailable, so it's a no-cost choice to the vendor. Yes, there is a cost, but it's borne by the customer. Often weeks later, the customer is left with an unfulfilled order and must

make a choice. Either accept that the book can't be found, or reorder from another vendor. And these actions require staff time.

The discount issue is a challenge for vendors that focus on order fulfillment, and for well over half a century, we have considered order fulfillment an absolute priority. Our fulfillment rates exceed 95 percent (while other vendors hover in the mid-70-percent range). For us, this is only possible by using flexible discounts and ignoring the variability of publisher discounts.

Libraries order books, and we believe it's our obligation to make a complete and honest effort to fulfill their orders. 🌲



Little Red Herrings from page 45

make one point. At this rate, we'll eventually wake up **Congress** to take another look at copyright. I hope I don't need to remind anyone that the last three times **Congress** did this, it only made things worse. Do the numbers 70 years after the death of the author, 95, or 120 ring a bell? The old joke about the opposite of Progress being **Congress** is hilarious, of course, but especially when used in conjunction with copyright.

While most of what I read about copyright borders on the pejorative, no one really calls for copyright here to mimic what it is in China. And yet this strikes me as the only place left for us to go. If the information-wants-to-be-free crowd wins the day — and they are, of course

— then who are we, those of us who create content, to try to stymie them at any juncture for whatever they want? What is yours is theirs and what is theirs is theirs. If our current copyright laws are draconian and debilitating to those who want and need information, then why not make it the Wild West of Copyright here at la China, the Wild East of copyright?

It sounds silly, I know, but why not let the decision to make something free to everyone be made by those who create the information that ostensibly so many people want? Is it too much to ask that we allow them to decide if they will make their information available on Creative Commons or some other open access venue rather than letting those who had little or nothing to do with creation of said information make it for them? Sure, if we do it this way we won't get everything, but then, the search for information has never been a zero sum game.

It's always been piecemeal at best, and that piecemeal approach worked pretty well because it forced those who want more to reflect a bit and perhaps create something on their own. In other words, it helped to make us all both users and creators. The last thing we need is for yet another divided world between competing creeds, or more disincentives for those who create content.

When you think about it, copyright has worked pretty well in this country, and it has allowed the rich and the poor, the intelligent and the clever, the enterprising and the flippant to be successful. Are we ready to jettison something that has worked pretty well for something we not only don't know is going to work, but have some preliminary evidence that it may in fact imprison that very thing it hopes to liberate? 🌲